

# Notice of Allowability

Application No.

10/034,620

Examiner

Thong Q. Nguyen

Applicant(s)

OVERBECK, JAMES W.

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the communication, the Terminal Disclaimer and the Oath filed on 8/1/07.
2. ☒ The allowed claim(s) is/are 62-81 and 91-97 which are renumbered as claims 1-27.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material

5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

THONG NGUYEN  
PRIMARY EXAMINER

### DETAILED ACTION

1. The present Office is made in response to the communication and the Terminal Disclaimer filled by applicant on 8/1/2007.

#### *Double Patenting*

2. The rejection of claims 62-81 and 91-97 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-35 of U.S. Patent No. 6,201,639 in view of Alexay et al, Essay titled "Fluorescence scanner employing a Micro scanning Objective" as made in the Office action of 3/6/2007 is overcome by the filing of the Terminal Disclaimer and the Oath on 8/1/07 which Terminal Disclaimer and the Oath are approved by the Office.

### EXAMINER'S AMENDMENT

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

#### **In the claims:**

- a) In claim 66: on line 1, changed the status indicator of the claim from "(withdrawn)" to --(previously presented)--;
- b) In claim 67: on line 1, changed the status indicator of the claim from "(withdrawn)" to --(previously presented)--.

***Allowable Subject Matter***

4. Claims 62-81 and 91-97 are allowed.
5. The following is an examiner's statement of reasons for allowance:

The wide field of view scanner as recited in each of claims 62 and 72 is patentable with respect to the prior art, in particular, the U.S. Patent Nos. 5,241,364; 5,578,818 and 4,948,330 by the limitations related to the structure of the scanning assembly, the objective lens and the mirrors for providing light from a light source to a sample. While the use of a scanning assembly supporting an objective lens is disclosed in the art; however, the prior art does not disclose a scanning assembly having mirrors for supporting and displaced the objective lens wherein the light path has substantially constant length and extending partially over an axis of the scanning motion after emission from the light source to the objective lens as claimed.

Regarding to the combined product as provided in claims 1-35 of U.S. Patent No. 6,201,639 and the art provided by Alexay et al, Essay titled "Fluorescence scanner employing a Micro scanning Objective", the rejection of the present claims is overcome by the filing of the Terminal Disclaimer and the Oath on 8/1/07 which Terminal Disclaimer and the Oath are approved by the Office.

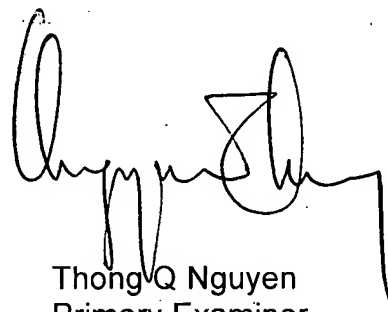
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

**Conclusion**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q. Nguyen whose telephone number is (571) 272-2316. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephane B. Allen can be reached on (571) 272-2434. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Thong Q. Nguyen', with a stylized flourish at the end.

Thong Q. Nguyen  
Primary Examiner  
Art Unit 2872